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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,654	01/22/2004	Edward Eytchison	Sony-05400	9392

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EXAMINER

JUNG, DAVID YIUK

ART UNIT	PAPER NUMBER
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2134

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,654

Applicant(s)

EYTCHEISON ET AL.

Examiner

David Y. Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

CLAIMS PRESENTED

Claims 1-31 are presented.

Response to Arguments

Applicant's arguments filed have been fully considered but they are not persuasive.

In response to applicant's argument that the references can be combined so as to not teach the claimed invention (pages 2, 4, 5, 6 of the Remarks section of Applicant's arguments as filed), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that each reference seems to teach differently from that of the claimed invention (page 3, especially the first two full paragraphs of the Remarks section of Applicant's arguments as filed), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually (pages 2, 4, 5, 6 of the Remarks section of Applicant's arguments as filed), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

CLAIM REJECTIONS

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Regarding claims 1-31, the claimed invention is directed to non-statutory subject matter. Claims recite only perfunctory recitation of functional material (electronic device, computer readable medium, etc.). Aside from this, the claims recite only nonfunctional descriptive material. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in

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connection with the programming of a general purpose computer.”). Such a result would exalt form over substance.

For further guidance on the term “nonfunctional”, please see MPEP 2106.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Regarding all presented claims, the relied references are as noted in the previous Office Action. Please see the previous Office Action for detailed citation.

Claims 1-21, 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis.

Regarding claim 1, Davis teaches “A method comprising: detecting a user's electronic device activity pattern; comparing the detected activity pattern against a plurality of user action identification profiles, wherein each user action identification profile is associated with a particular unique user; and using the comparing (section 3. Application Space, e.g., credit card fraud detection which identifies patterns of credit card use).”

These passages of Davis do not teach "to identify the current user as being one of the particular users " in the sense of the claim.

Darrell teaches "to identify the current user as being one of the particular users (Figure 1, i.e., tracking and identification)" for the motivation of better tracking persons (section 1. Introduction, i.e., locate and track user).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis for the motivation noted in the previous paragraphs so as to teach the claimed invention.

Claims 1, 10, 11, 21, 27 are independent claims.

The special features of claim 10 (detection etc.), claim 11 (system etc.), claim 21 (storing the activity pattern etc.), claim 27 (identification system with modules etc.) are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection).

Regarding claims 2, 5-9, 12, 15-19, 25, 28, 29, 31 (various user identifying), these features are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection)

Regarding claims 3, 4, 13, 14, 20, 26, 30 (various scoring as to whether matches are reasonable), these features are taught by Davis (section 3. Application Space, e.g., credit card fraud detection which identifies patterns of credit card use)."

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis and Seno.

Claims 22-24 depend from claim 21. Darrell and Davis teach as noted in the rejection of claim 21.

Thus, Darrell and Davis teach all but the special features of claims 22-24 (biometric features and password, etc.).

The special features of claims 22-24 (biometric features and password, etc.) are taught by Seno (section I. Introduction, i.e., finger print, iris, passwords, etc.) for the motivation of user authentication ((section I. Introduction).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis and Seno for the motivation noted in the previous paragraphs so as to teach the claimed invention.

Conclusion

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points of Contact

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (272) 272-3811.

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David Jung

A handwritten signature in black ink, consisting of a stylized 'D' followed by a series of loops and a horizontal line extending to the right.

Patent Examiner

9/14/07